

1 HONORABLE RICHARD A. JONES
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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON

10 NATHANIEL CAYLOR, et al.,

11 Plaintiffs,

12 v.

13 CITY OF SEATTLE, et al.,

Defendants.

CASE NO. C11-1217RAJ

CONSOLIDATED
ORDER

14 This matter comes before the court on two motions¹ to exclude Plaintiffs' expert
15 witnesses and for relief from the deadline for designating rebuttal experts. For the
16 reasons stated below, the court GRANTS both motions in part and DENIES them in part.
17 Dkt. # 54, 56. This order concludes with instructions for the parties to complete expert
18 discovery.

19 Plaintiffs have designated three experienced law enforcement officers to serve as
20 expert witnesses. Defendants ask the court to exclude at least two of them because they
21 seek to offer cumulative testimony in violation of both Fed. R. Evid. 403 (which permits
22 a court to prevent parties from "needlessly presenting cumulative evidence") and Local
23 Rules W.D. Wash. LCR 43(j) (which prohibits a party from "call[ing] more than one
24 expert witness on any subject").

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26 ¹ The two motions are filed on behalf of different defendants, but are repetitive of each other and
27 request the same relief. The court questions the value of filing a separate motion that raises no
new arguments. A notice of joinder in a motion will suffice in these circumstances.

1 The court has reviewed each expert's report. That review reveals that although
2 each witness touches on somewhat different topics, their testimony is largely cumulative.
3 In particular, all three witnesses devote the clear majority of their reports to an
4 assessment of the facts confronting the officers who fired the gunshot that is at the center
5 of this case and an assessment of whether the law permitted the gunshot given those facts.
6 Plaintiffs only reinforce the cumulative nature of the experts' potential testimony by
7 repeatedly, in their opposition to the pending summary judgment motions, citing all three
8 of their reports as evidence supporting a single assertion.

9 The court also notes that Defendants have moved, in conjunction with the
10 summary judgment motions, to strike evidence from the experts for various reasons.
11 Often, the motion to strike targets instances where the expert witnesses make factual
12 findings (thus invading the province of the jury or other factfinder) and then use those
13 impermissible fact findings to reach legal conclusions (thus invading the province of the
14 court). The court will not resolve the motions to strike at this point. It will, however,
15 caution Plaintiffs to consider, as they comply with this order and for the remainder of this
16 litigation, whether it is likely that the court will permit any expert witness to act as a fact
17 finder or a judge.

18 The court orders as follows:

- 19 1) Within 7 days of this order, Plaintiffs shall provide to Defendants a disclosure
20 that unambiguously reveals which experts will testify as to distinct topics.
21 They shall not designate more than one witness for any topic. In particular, no
22 more than one witness will offer opinions as to whether the shooting in
23 question was justified.
- 24 2) Within 14 days of receiving Plaintiffs' disclosure, Defendants may designate
25 one or more rebuttal witnesses and reveal those designations to Plaintiffs.

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28 ORDER – 2

1 Defendants may have up to 28 days from receiving Plaintiffs' disclosure to
2 provide a written report or report from those experts.

3) Defendants may conduct depositions of Plaintiffs' experts without regard to the
4 now-expired discovery deadline. Plaintiffs may similarly depose any rebuttal
5 expert(s) that Defendants designate.

6 DATED this 2nd day of April, 2013.

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9 The Honorable Richard A. Jones
10 United States District Court Judge